

**MICROSOFT SOFTWARE - ENPOINTE TECHNOLOGIES
TERM CONTRACT #SPB04-829B**

1. PARTIES

THIS CONTRACT, is entered into by and between the following entities:

State of Montana, Information Technology Services Division, (hereinafter referred to as "the State")
125 North Roberts Street
Mitchell Building, Room 229
Helena, Montana 59620-0113
(406) 444-2700

En Pointe Technologies Sales Inc., (hereinafter referred to as the "Contractor")
Fed ID: 954-65-0291
100 N. Sepulveda Blvd., 19th Floor
El Segundo, CA 90245
(800) 800-4214

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect when executed and terminate on September 30, 2006, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed seven (7) additional years. This renewal is dependent upon legislative appropriations.

3. COST/PRICE ADJUSTMENTS

3.1 Cost Increases Percentage discounts must remain the same or better as in the bid for the initial term of the contract. After the initial term of the contract, each renewal term may be subject to a cost increase by mutual agreement. The State will only consider price adjustments due to Microsoft price changes.

4. SERVICES AND/OR SUPPLIES

The intent of this contract is to provide state agencies with an expedited means of procuring Microsoft products and licenses. The contract will be exclusive, meaning agencies are obligated to buy from this contract, except for those state agencies and departments that qualify for Microsoft's Educational Program and pricing. The State does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the contract.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration for products to be provided, the State shall pay within 30 days of a properly executed invoice, addressed to the address referenced on the agency issued purchase order. Agencies shall be invoiced on a monthly basis.

5.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

6. ACCESS AND RETENTION OF RECORDS

6.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

6.2 Retention Period. The Contractor agrees to create and retain records supporting the Microsoft Software products ordered for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

8. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

9. ORDERING REQUIREMENTS

9.1 Decentralized Purchases. The contractor must allow a decentralized procurement option where each state agency, local government, or other organization can purchase and pay for software directly on a monthly basis.

9.2 Centralized Purchases. ITSD centrally purchases certain software on behalf of all state agencies (e.g. Office Standard, Windows CAL, Exchange CAL, Exchange Server). In the event that any state agency other than ITSD submits a procurement request (such as a purchase order) for these products, the LAR must notify ITSD (Liaison as per Section 16) before fulfilling the order.

9.3 Items Ordered. The items ordered (software license, media, documentation, etc.) shall be delivered to the ordering agency as specified in their purchase order.

9.4 Initial Response. Contractor must make initial response to acknowledge the State's requests for information regarding the order, reports, or any other information no later than one business day after the request. The average time expected for the Contractor to provide this initial response is 4 hours or less.

9.5 Delivery. Contractor will deliver items ordered within fourteen (14) calendar days from date of receipt of order. Delivery times beyond fourteen days will be negotiated between the ordering agency and the contractor. If the ordering agency and the contractor cannot agree upon a delivery date, the ordering agency may cancel the purchase order.

9.6 Procurement Card. The State of Montana has implemented a Procurement Card Program to give agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment. Contractor must accept orders made by Procurement Card. (The Procurement Card is a GE MasterCard). Transactions fees may apply, contact the State Procurement Bureau for more information (406) 444-2575.

9.7 Cooperative Purchasing. Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

9.8 Pricelist. Contractor shall provide the State a revised pricelist as soon as possible after Microsoft issues any changes. Contractor must provide the State pricelist on the Internet in a searchable format, and also in a Microsoft Excel format at the request of the State. The pricelist must contain the following fields at a minimum: Part Number, Item Name, Product Type, Pool, MSRP, and Net Price.

9.9 Contractor Staff for Microsoft Products. Contractor must be able to answer any and all questions from the State pertaining to Microsoft licensing and Microsoft products made available under this contract. At a minimum, Contractor shall have one staff member who is available to the State to answer all questions regarding Microsoft products and licensing, and one staff member (could be same person) to produce the required reports for the State.

9.10 Contractor Reporting. The contractor must meet the following reporting requirements at a minimum. The contractor must provide the total number of licenses purchased by each state agency, local government, or other organization broken down by the type of license on a monthly basis to ITSD. A yearly summary of the same information is also required. Required fields in the report: Department/Agency, Contact Name, Product MS #, Product Description, Date, PO #, Invoice #, Unit Amount, and Extended Amount. (See example of reporting format in Attachment B).

It is preferable that the Contractor reports use the State standard acronyms for the departments. See Attachment C for Department acronyms.

10. TAX EXEMPT

The State of Montana is a tax-exempt governmental entity. No form of sales, personal property, use or any other local state or federal tax shall be due and payable by the State.

11. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

12. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

13. INTELLECTUAL PROPERTY/OWNERSHIP

13.1 Mutual Use. All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by Contractor under this contract or any program code, including site related program code, created, developed or prepared by Contractor under or in support of the performance of its obligations hereunder, including manuals, training materials and documentation (the "work product").

14. PATENT AND COPYRIGHT PROTECTION

14.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

14.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such

product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

15. CONTRACT OVERSIGHT

15.1 CIO Oversight. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

15.2 Right to Assurance. If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the contract under the terms and conditions or other rights and remedies available by law or provided by the contract.

15.3 Stop Work Order. The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

16. CONTRACT TERMINATION

16.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform the contract pursuant to Section 17, Event of Breach – Remedies.

16.2 Bankruptcy or Receivership. Voluntary or involuntary Bankruptcy or receivership by Contractor may be cause for termination.

16.3 Non-Compliance with Department of Administration Requirements. The Department of Administration pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract signing.

16.4 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313(3)).

17. EVENT OF BREACH – REMEDIES

17.1 Event of Breach. Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- (a) products or services furnished by the Contractor fail to conform to any requirement of the contract, or
- (b) failure to submit any report required hereunder; or
- (c) failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

17.2 State's Actions in Event of Breach. Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- (a) give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- (b) give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- (c) set off against any other obligation the State may owe to the Contractor any damages the State suffers by reason of any event of breach;
- (d) treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

18. WAIVER OF BREACH

No failure by the State to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other breach on the part of the Contractor.

19. STATE PERSONNEL

19.1 State Contract Manager. The State Contract Manager identified below is the State's single point of contract and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints or any other issues regarding the contract should be directed to the State Contract Manager.

Brett Boutin
125 N. Roberts Street
Helena, MT 59620
(406) 444-2824
(406) 444-2701

19.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

Majid Jilani
100 N. Sepulveda Blvd. 19th Floor
El Segundo, CA 90245
(310) 725-5200
(310) 725-5289

20. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

21. SCOPE, AMENDMENT AND INTERPRETATION

21.1 Contract. This contract consists of **8** numbered pages, any Attachments as required, RFP #**04-829B**, as amended and the Contractor's IFB response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

21.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

22. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

Department of Administration, ITSD
FEDERAL ID # 0302402

EnPointe Technologies
FEDERAL ID # 954-65-0291

BY: Brian Wolf, CIO
(Name/Title)

BY: _____
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Approved as to Form:

Legal Counsel (Date)

Procurement Officer (Date)

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

Brian Wolf
Chief Information Officer (Date)

Attachment A
Percent off Retail for Term

EnPointe guaranteed percentage off retail for all Microsoft software, per each Microsoft Pool:

Percent Off Retail			
Microsoft Select 6.1 Pool	License Only	License and SA	SA Only
Application (Level D)	17.05%	23.25%	25.55%
Server (Level D)	17.05%	23.25%	25.55%
Systems (Level D)	17.05%	23.25%	23.25%

EnPointe guaranteed percentage off retail for all Microsoft media and documentation:

Category	Percent off retail
Media (CD)	24.40%
Documentation	24.40%

Attachment B
Department Acronyms

ADV	Montana Advocacy Program
AGR	Department of Agriculture
ART	Montana Arts Council
BOE	State Board of Education
BPE	Board of Public Education
CHE	Office of the Commissioner of Higher Education
DOC	Department of Commerce
COR	Department of Corrections
CPP	Commissioner of Political Practices
DEQ	Department of Environmental Quality
DLI	Department of Labor and Industry
DMA	Department of Military Affairs
DOA	Department of Administration
DOJ	Department of Justice
DOR	Department of Revenue
FWP	Department of Fish, Wildlife and Parks
GOV	Governor's Office
HCT	Helena College of Technology
HHS	Department of Public Health & Human Services
HIS	Historical Society
JUD	Judiciary
LEG	Legislative Branch
LIV	Department of Livestock
MDT	Department of Transportation
MSL	Montana State Library
DNR	Department of Natural Resources & Conservation
OPI	Office of Public Instruction
PSC	Department of Public Service Regulation
SAO	State Auditor's Office
SOS	Secretary of State
STF	Montana State Fund
USM	University System

Attachment C
Example of Report

Report for the Month of November 2003

<u>Dept</u>	<u>Dept Contact</u>	<u>PT Number</u>	<u>Product Description</u>	<u>Date</u>	<u>PO#</u>	<u>Inv. #</u>	<u>Qty</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
FWP	Dave Dube	077- 02237	Access 2002 Win32 English MVL	11/06/03	04- 698	9050289	4	\$160.00	\$640.00
DOA	Irv Vavruska	E85- 00345	Windows XP Pro English UPG MVL	11/10/03	04- 687	9050288	15	\$120.00	\$1800.00
DOA	Randy Holm	P73- 00205	Windows Svr Std English Lic/SA Pack MVL	11/14/03	04- 954	9050670	36	\$580.00	\$20,880.00